(3)

Supreme Court, U.S.
FILED
MAR 1 1996
CLERK

No. 95-668

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

AUCIELLO IRON WORKS, INC.,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

JOINT APPENDIX

JOHN D. O'REILLY, III
(Counsel of Record)
O'REILLY & GROSSO
77 Turnpike Road
Post Office Box 3118
Southborough, MA 01745
(508) 460-1500
Counsel for Petitioner.

RICHARD H. SEAMON
ASSISTANT TO
THE SOLICITOR GENERAL
U.S. Department of Justice
Washington, D.C. 20530
(202) 514-3344
Counsel for Respondent.

Washington, D.C. • THIEL PRESS • (202) 328-3288

PETITION FOR CERTIORARI FILED OCT. 19, 1995
CERTIORARI GRANTED JAN. 19, 1996

81 pp

TABLE OF CONTENTS

Page

APPENDIX A

Chronological List Of Relevant Docket Entries 1a

APPENDIX B

Excerpts from Transcript of Proceedings of June 21, 1989. . . . . 2a

Excerpts from Transcript of Proceedings of August 8, 1989 . . . . . 11a

Excerpts from Transcript of Proceedings of August 9, 1989 . . . . . 48a

APPENDIX C

General Counsel's Exhibit 5 – Employer letter to employees dated October 14, 1988 enclosing form for resigning from Union 62a

General Counsel's Exhibit 7 – Union telegram to Employer dated November 17, 1988, announcing Union ratification of company proposal 65a

General Counsel's Exhibit 8 – Employer telegram to Union withdrawing Union recognition 66a

General Counsel's Exhibit 14 – List of employees of Auciello before strike 67a

General Counsel's Exhibit 15 – List of employees reviewed by Employer on November 28, 1988 . . . . . 68a

General Counsel's Exhibit 17 – NLRB Certification of March 30, 1977. . . . . 69a

APPENDIX D

Respondent's Exhibit 2a – Resignation from Union of Steven Brodeur, October 13, 1988 . . . . . 71a

Respondent's Exhibit 2b – Resignation from Union of Nguyen Sang Trung, October 13, 1988 . . . . . 71a

Respondent's Exhibit 2c – Resignation from Union of Phuc Van Tran, October 13, 1988. . . . . 72a

Page

Respondent's Exhibit 2d – Resignation from Union of Giao Huynh, October 13, 1988 . . . . . 72a

Respondent's Exhibit 3a – Resignation from Union of James Chiasson, October 14, 1988 . . . . . 73a

Respondent's Exhibit 3b – Resignation from Union of Paul N. Greenglass, October 14, 1988 . . . . . 73a

Respondent's Exhibit 3c – Resignation from Union of John Duckworth, October 14, 1988 . . . . . 74a

Respondent's Exhibit 3d – Resignation from Union of Michael G. Barbour, October 17, 1988. . . . . 74a

Respondent's Exhibit 3e – Resignation from Union of Robert Cibelli, November 21, 1988. . . . . 75a

Respondent's Exhibit 3f – Resignation from Union of Quang Nguyen, November 21, 1988 . . . . . 75a

Respondent's Exhibit 3g – Resignation from Union of Gary F. Boudreau, November 21, 1988 . . . . . 76a

Respondent's Exhibit 3h – Resignation from Union of D. A. Duplisea, November 23, 1988 . . . . . 76a

Respondent's Exhibit 4 – Resignation from Union of Frank J. Tomolillo, October 14, 1988 . . . . . 77a

APPENDIX E

Letter dated January 19, 1996 from Supreme Court of the United States notifying Counsel for Petitioner that Petition for Writ of Certiorari has been granted. 78a

APPENDIX A

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Board Case No. 1-CA-25969
In the Matter of: Auciello Iron Works, Inc.

Date	Documents
12/1/88	Charge
1/17/89	First Amended Charge
1/20/89	Complaint and Notice of Hearing
2/3/89	Answer to Complaint
6/8/89	Order Rescheduling Hearing
6/21/89	Hearing Opened
8/9/89	Hearing Closed
11/24/89	Administrative Law Judge's Decision
1/29/90	Respondent's Exceptions
6/27/91	Board's Decision and Order
9/5/91	Application for Enforcement
9/30/92	Decision of the Court of Appeals and Remand
4/22/93	Letter advising parties of Board's acceptance of Court of Appeals' remand
5/7/93	General Counsel's Statement of Position
5/28/93	Respondent's Supplemental Brief
5/9/95	Board's Supplemental Decision and Order
7/21/95	Decision of the Court of Appeals
7/21/95	Judgment of the Court of Appeals
10/19/95	Petition for writ of certiorari filed
1/19/96	Petition for writ of certiorari granted

APPENDIX B

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS OF JUNE 21, 1989

ROBERT THOMAS

DIRECT EXAMINATION

[37] Q. Let me show you what's been admitted as General Counsel's No. 5. This is a letter with an attachment. Have you seen this before?

A. Yes, I have.

Q. When did you first see that?

A. When I became aware of it, Mr. Mortimer called me after one of the employees had received it and I probably saw a copy of it sometime during that week. Mr. Mortimer provided me with a copy of it.

Q. Did Mr. Mortimer tell you who got this letter?

A. Yes.

Q. What did he tell you?

MR. O'REILLY: Objection.

[38] JUDGE ZANKEL: Overruled.

Q. What did he tell you?

A. He told me that it had been sent by the company to all employees.

Q. And just so we have on the record the continuity, this letter concerned what?

A. Well, it concerned the company's opinion on where the parties were regarding negotiations and included a form so that the employees could resign and go to work.

* * *

[42] Q. (By Mr. Herbster.) Were there any other bargaining sessions?

A. Yes, there was one on November 17th.

Q. So there were no sessions from the 26th to the 17th?

A. That's correct.

Q. Do you know why there were no sessions between that time period?

A. Well, at the conclusion of the meeting on the 18th, and my understanding it was the same on the 26th when I didn't attend, was that it was left up to the Federal Mediator to attempt to schedule a meeting.

Q. Did you attend the meeting on the 17th?

A. Yes, I did.

* * *

[43] Q. (By Mr. Herbster.) What else was discussed, specifically with regard to bargaining proposals, Mr. Thomas?

A. Well, Mr. O'Reilly indicated that he had a proposal to present on behalf of the company, which he did make the proposal verbally, and then at some point he presented a [44] written proposal.

Q. Let me show you what's been introduced into evidence as General Counsel's No. 6, with a notation of November 17. Do you know who wrote that?

A. Yes. I did.

Q. And is that the proposal you referred to?

A. That is the written proposal, yes.

Q. Now in addition you say there was an oral proposal?

A. Yes.

Q. And what was the oral proposal?

A. Part of his proposal was the IRA contribution, which had been previously agreed to when he resubmitted it.

He submitted a proposal on wages of three percent the first year, four percent the second year and five percent the third year.

His proposal on the cost of welfare coverage was that employers would pay the full cost of all the welfare coverage.

He also stipulated a proposal on an overtime premium pay in which the time and a half provision after eight hours would be increased to time and a half after forty hours.

That was the gist, as I recall, of his economic proposal, other than a written proposal that he submitted.

Q. So is the written proposal in addition to the oral proposal that you've just testified to?

[45] A. Yes.

Q. That was the Employer's proposal entirely?

A. Yes.

Q. You mentioned the wage rates. I believe you testified three percent, four percent and five percent was the Employer's proposal for the three years. Is that your testimony?

A. That's my recollection, yes.

Q. Okay.

Let me show you a one-page document with the notation of November 17th, '88. Is this in your handwriting?

A. Yes, it is.

Q. And are these your bargaining notes?

A. Yes, they are.

Q. In looking at this, I notice it says, "Company Proposal", and there is a notation next to wages.

A. Mm-hmm.

Q. Okay. Take a look at that, and what does that state?

A. That states a four percent increase in the first year,

a four percent in the second and a five percent in the third.

Q. Does that refresh your recollection as to the Company Proposal?

A. Yes, it does.

Q. So that is the correct proposal, four, four and five?

A. Yes.

[46] Q. And it wasn't three percent the third year?

A. No.

Q. For the first year, I'm sorry.

A. No.

Q. When did you write down those bargaining notes?

A. During the meeting.

Q. After you got that entire Company Proposal, the written and the oral proposal that you just testified to, what did you do?

A. We asked for a caucus so that the Union committee could briefly study the proposal.

Q. And what happened?

A. Well, we spent some time reviewing it as best we could because of the extensive written proposal and the areas that it touched on, such as management rights and management prerogatives, grievance and arbitration provisions. We decided if nothing else, we needed some time to study it to find out what the substance was.

Q. Then what happened?

A. We called the Mediator back into the meeting and told him it was our recommendation that we adjourn the meeting and that we were going to review the company's proposal and that we would leave it up to him to schedule further meetings.

Q. Did you ever at that bargaining session tell the Mediator or anyone from the company that you rejected that [47] Company Proposal?

A. I did not.

Q. Did you ever use any word like "reject"?

A. No, I didn't.

Q. What occurred next?

A. Following the adjournment, the Union committee went downstairs in the lobby of the hotel and we spent some time down there discussing the company's proposal.

Q. Was there any result of that conversation after you discussed it with the committee?

A. No, only our concern that the company now was opening up provisions of the contract that we'd had agreement on, and we were kind of concerned about that.

Q. What were those provisions?

A. Well, they were overtime provisions, grievance of arbitration, management prerogatives, employee classifications.

Q. What happened next?

A. We all went our separate way and, as I recall, I had an assignment in another area out of town. I contacted Mr. O'Reilly probably within two or three days of that meeting, in a private telephone conversation, and I talked with him and questioned him on whether there would be any advantage to sitting down and negotiating and trying to come up with a mutually satisfactory package for an agreement.

Q. What did he say?

[48] A. He said to me that that was not impossible, that the company had taken a stand and in his opinion they were not going to change it, and whether he advised them or not, they weren't going to change their position.

Q. Did you say in this conversation that you rejected that last Company Proposal?

A. I did not.

Q. Did Mr. O'Reilly say that the proposal was withdrawn?

A. No, he didn't.

Q. Did he make any indication that would lead you to believe that this was withdrawn?

A. No.

Q. What happened next?

A. I contacted Mr. Mortimer and asked him to contact all of the employees and explain – advise them of the results of the last conference with the company, and recommend to them that we accept the last proposal and end the strike.

Q. What occurred after you told Mr. Mortimer to do that?

A. He contacted me by telephone about five days or so after that.

Q. When would this date be, approximately?

A. Probably around the 26th of November. I recall that because I think it was – I think it was a Saturday. He contacted me from home. He contacted me at my home.

Q. During this week, from the time of the 18th or so until [49] the 26th, where were you. Were you –

A. I was traveling. If I recall, I think I was – had an assignment in Albany, New York. If memory serves me.

Q. So you spoke to Mr. Mortimer on approximately the 26th?

A. We may have had some conversation in the interim with him advising me of what was happening with the contracts, but the final conversation when the contracts had been made was on the 26th, when he called.

Q. And what was your conversation with Mr. Mortimer on the 26th?

A. He advised me that his contacts and those made by Joe Parenti, the steward, clearly indicated that the employees agreed that it was time to accept the proposal and end the strike and go back to work.

MR. O'REILLY: Your Honor, if that is being offered for the truth of the statement, I object to it –

JUDGE ZANKEL: How is it being offered?

MR. HERBSTER: Not necessarily for the truth of it, but for the fact to show what led up basically to the next act. I mean, it didn't come in a vacuum.

JUDGE ZANKEL: Overruled.

Q. (By Mr. Herbster.) There was no ratification meeting at this time, was there?

A. No, there wasn't.

Q. Why not?

[50] A. Well, we felt under the circumstances that time was important and it was time that the strike was concluded.

The employees, economically, were suffering. They had indicated that they had wanted to get back to work if we could get a contract and if we'd have used the procedure that we sometimes use in notifying people and trying to get a hall, it might have taken three or four days. And we felt this way, by phoning people, it would serve the same purpose.

* * *

[51] Q. At anytime during these negotiations, did any employees tell you that they didn't want the Union to represent them?

A. No.

Q. Had you gotten any reports from Mr. Mortimer or from [52] any other Union Representative that the employees had told him or anyone else that they didn't want the Union to represent them?

A. No.

Q. Did you get any reports at anytime during these negotiations in any words to show that the Union had rejected – I'm sorry, that the employees had rejected the Union in any way?

A. No.

* * *

CROSS-EXAMINATION

What did Mr. Mortimer tell you about employees [53] resigning and crossing the picket line – resigning from the Local Union, crossing the picket line and returning to work at Auciello?

A. Well in some cases he told me that the employees that had resigned had in fact contacted him and said that although they had signed a resignation, it was not an indication for lack of support from the Local Union. They needed to go back to work because they needed the money.

Q. And they were saying that they were resigning from the Union because they wanted to go back to work and they needed the money?

A. Yes, that's what he –

Q. What's what Mr. Mortimer quoted them as saying?

A. Mm-hmm.

Q. And who was he quoting, do you recall?

A. I have no idea.

Q. Did you verify the fact at any point that in fact a number of Auciello employees during the course of a strike in fact did resign from the Local Union?

A. I've seen some of the resignations.

Q. I see.

And have you verified with Mr. Mortimer the fact that a number of employees did in fact cross the picket line and come back to work during the strike?

A. Yeah, I think I mentioned that, yes.

* * *

[71] Now, on the last meeting, that was November 17th; [72] am I correct?

A. Yes, I think that's correct.

Q. At the Park West or whatever the hotel was in Marlboro?

A. Yes.

Q. You were given a proposal by the Company in writing and orally, and the written portion of that proposal is General Counsel's No. 6. As an International Representative and General Organizer for, I think you said 25 years, what was in there that you didn't understand and you felt called for an indefinite recess?

A. Well, a change in grievance and arbitration.

Q. You didn't understand that?

A. Not initially, no.

Q. And how long did it take you before you were able to understand that?

A. Well I think I spent some time the following day or the day after reviewing it.

Q. Following – Do you recall what time it was of the day? Was it morning or afternoon that this meeting took place?

A. I recall it was afternoon.

Q. If I suggest to you it was in the morning, would that be of any assistance to you?

A. 9:30 a.m.

Q. Nine-thirty. All right.

And when did you break off the negotiations that [73] day? It was –

A. I don't have the adjournment time, but I would be surprised if we there at the meeting more than an hour.

* * *

[78] Q. (By Mr. O'Reilly.) You had a discussion with me and did I not indicate to you that I didn't envision any foreseeable change in management's then current position?

A. That's correct.

Q. Okay. And did you then – By the way, did you have any questions in that – Did you ask me to explain

any of these written proposals that you indicated you had difficulty in understanding?

A. No.

Q. Okay. And at that point did you ask the conciliator to reconvene the parties?

A. No, because that wasn't the understanding. The understanding was he would reconvene the parties when he thought it was appropriate.

Q. Oh, okay. But you made no requests of him to reconvene the parties; is that correct?

A. Not after the meeting. We told him that we'd be available though.

* * *

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS OF AUGUST 8, 1989

CORRECTIONS TO TRANSCRIPT OF 6/21/89

[88] Before we have the hearing in full scale today, I have my own preliminary matter. I have examined the transcript of the proceedings of June 21, and with the counsel's permission, I would like to have the record today reflect three small transcript corrections. I want to discuss it off the record first with counsel so that there won't be any difficulty honoring it. Off the record.

(Off the record.)

JUDGE ZANKEL: Counsel and I have agreed to make [89] the following changes in the transcript. On page 14, line 20, after the words to me, that's t-o, m-e, add the words, the material is remotely relevant, so that the sentence on page 14 that's being in corrected, and

which starts on line 19 will read, quote, I find on the basis of Mr. Herbster's narration to me, the material is remotely relevant and GC #9. Exhibit No. 9, is received. End quote.

The next change in the transcript that we agreed to is on page 28 of the transcript, line 3. To delete the word petition and substitute the word, quote, constitution, end quote.

The next change in the transcript is on page 44, line 3. To delete the word October on line 3 and to substitute the word November.

And the last page to be corrected by agreement of the parties and the Judge is page 82, line 5 and 6. With respect to line 5, the word purposively, p-u-r-p-o-s-i-v-e-l-y, should be deleted. And the word purportedly, p-u-r-p-o-r-t-e-d-l-y, should be substituted. And on page 82, line 6, the word auditing, a-u-d-i-t-i-n-g, should be deleted. And the word, quote, negotiating, end quote, n-e-g-o-t-i-a-t-i-n-g, end quote should be inserted.

Also on page 82, line 22, we have agreed to delete the words, the settlement's. It's s-e-t-t-l-e-m-e-n-t- apostrophe-s, drawn, d-r-a-w-n. And substitute for those [90] words, quote, which are, a-r-e, withdrawn, one word, w-i-t-h-d-r-a-w-n, so that the entire sentence which starts on line 20, page 82 will read, both parties represented will have the opportunity and obligation to do so. And I expect that these documents which are withdrawn will be delivered at the end of that same day's session to the appropriate player.

Have I correctly stated the corrections in the transcript, Mr. Herbster?

MR. HERBSTER: Yes, your Honor.

JUDGE ZANKEL: Mr. O'Reilly?

MR. O'REILLY: Yes, your Honor.

JUDGE ZANKEL: Okay. The transcript is so corrected. Thank you for your cooperation. Okay, Mr. Herbster, you may proceed with your presentation. You can continue with your presentation of your case.

* * *

DAVID MORTIMER

DIRECT EXAMINATION

[107] Q. Now, you said some people had to resign. You mean from the union, correct?

A. Yes.

Q. Okay. Did you have any conversations with anyone about resigning from the union?

A. Not about resigning, no. I talked to other people to see what – nobody said they were going to resign. People I talked with said they had to go to work and they just couldn't stay on strike because of economic problems. But they weren't resigning or quitting their employment. They were just getting part-time work. Even if it was full-time, you know, they still had reasons to go back to work once the strike was settled.

Q. You say that when they got part-time work, some employees got part-time work. Where would that have been?

A. In the area.

Q. At other employers?

A. Yes.

* * *

CROSS EXAMINATION

[110] Q. And in prior negotiations, you would have yourself, a steward, and perhaps an international representative as the negotiating committee. Am I correct?

A. Right.

Q. And have there been any prior problems in your relationship with the company, with negotiations?

A. Not that I recall.

Q. And would I be correct if I characterize the relationship in negotiations as several fairly friendly meetings, shaking hands, and then your committee would bring it back for ratification with a recommendation?

[111] A. Yes.

* * *

[132] Q. And the picketing had stopped on that Friday, is that correct?

A. Yeah.

* * *

REDIRECT EXAMINATION

[138] Q. Did any of those employees ever tell you, or did you hear from any source, that the employees who resigned did not wish the union to represent them?

A. No.

MR. O'REILLY: What was that answer sir? I couldn't hear you.

THE WITNESS: No.

MR. O'REILLY: Thank you.

BY MR. HERBSTER:

Q. Did you hear from those employees or from any source that those employees who resigned had any negative feelings against the union?

A. No.

Q. Did you ever discuss with any employees whether or not they should resign from the union?

A. I think in brief on November 21st, thereabouts, I had talked to a few of them, went back to work.

Q. Do you remember what you said to them?

[139] A. I talked – yes. I told them.

MR. O'REILLY: Would you identify who are the employees you're talking about?

THE WITNESS: I talked to Eddy Windsor. And I talked to Cibelli. Eddy Windsor was concerned, and I think Cibelli was also, about his age. And it would be tough to get reemployed full time elsewhere. And they were getting tight on money, I suppose. Something to that effect. We had little showing on the picket line because of people working. I just said they could go back, there would be no problem.

BY MR. HERBSTER:

Q. They could go back to work –

A. They could go back to work.

* * *

RECROSS EXAMINATION

[152] Q. Did you not do that, sir? Did you not cause charges to be filed against the individuals who resigned from the union and subsequent to the resignation, crossed the picket line?

A. I filed charges against everybody that resigned.

Q. And everybody, including those individuals who resigned on the 13th, the day before the picket line went up?

A. No. I don't believe I did that.

Q. Some people had resigned on the 13th, is the [sic] correct?

A. I don't believe I filed charges on the 13th.

(Pause)

Q. I'm just going to show you Respondent's Exhibits 2A through 2D, the resignations of Stephen Brodeur, Sang [153] Trung, Phuc Van Tan, and Giao Huynh, or something to that effect. Did you not file charges against those individuals?

A. I'd have to check my records. I don't believe I did.

Q. Would you please?

A. I'm not sure – it's been dragging on for so long here.

JUDGE ZANKEL: Off the record.

(Off the record.)

BY MR. O'REILLY:

A. I don't have any copies of charges to these people.

Q. How about the people who resigned on the 14th – the first day of the picket line – did you file charges against them?

A. Yes because the picket line was up.

Q. And they resigned on that day, did they not?

A. They are dated the 14th, yes.

Q. And you filed charges against these men who crossed the picket line the same day they resigned?

A. Right.

Q. Weren't you told by your steward that they physically gave their resignations to the steward before they crossed the picket line?

A. No.

[154] Q. The steward did not tell you that?

A. No, I received them in the mail.

Q. And your steward then told you that he was also given copies of the resignations?

A. I can't recall that.

* * *

FURTHER REDIRECT EXAMINATION

Q. Were the internal union charges completed in some way?

A. They were withdrawn.

[155] Q. By whom?

A. By myself, the local union.

Q. So no employees ever had to face any proceedings against them by the union, is that correct?

A. That's correct.

Q. No employees were even fined?

A. That's correct.

Q. No employees ever had their work relationship in any way restricted?

A. That's correct.

* * *

RALPH AUCIELLO

DIRECT EXAMINATION

[164] Q. Now, there has been placed in evidence a communication from – it's General Counsel's Exhibit 7. A communication, a mailgram to you from David Mortimer. Do you recall receiving that?

A. Yes, I do.

Q. And how did you receive it? Was it physically given to you, or was it called in?

A. It was telephoned to my home on a Sunday.

* * *

[165] Q. Now sir, I'm going to mention some of the names of your employees to you. And when I do, I would ask you to indicate to the Judge what if any grounds you then had for believing that that particular named employee no longer wished to be represented by Ironworkers Local 501.

[166] The first name is Rocco Aliberti.

A. Rocco Aliberti. It was clear to me that he was not a union supporter because on the 18th, which was that Friday that the picketing stopped, he came into the shop. He came over to me and he was picking up his tools. And he told me that he was very sorry the way things worked out. However, if there were, in his mind, going to be a union vote, he would definitely vote against the union.

He told me he felt – and he said this in front of myself and Mike Auciello, my brother – that he felt the men no longer supported the union. He also told me that previous to negotiations, he had been a leader in an effort to remove the union from the shop. And again, he wishes us luck.

He mentioned to us that there were three remaining picketers – this was the morning of the 18th – out there. And he knew that they wanted to come back to work and was going to go out and talk to them and say – and he asked me if I wanted them back. I said, of course I do. And he said he would go out and relay that they would be welcome back at Auciello Iron Works. So that's the way I remember Rocco.

Q. And did he say why [sic] was coming to pick up his tools?

A. He indicated he would be working elsewhere.

Q. All right. Salvatore Morle.

[167] A. Salvatore Morle. After a few days of picketing, he came into the shop. Again, he saw me. He was very upset that he wasn't able to cross the picket line, he said, because he was very concerned about his own personal safety. He mentioned to me that he had no use for the union anymore.

MR. HERBSTER: Your Honor, at this time I'm going to object. I have listened to the evidence on the first one, but I am going to object on the basis of hearsay.

JUDGE ZANKEL: Well –

MR. O'Reilly: It's not hearsay.

JUDGE ZANKEL: Overruled.

BY MR. O'REILLY:

A. He told me this directly that he felt the union did not represent him. He further told me that he did not feel – I'm repeating myself – that the union just plain

didn't represent him. And he stressed the personal safety thing two or three times. I said, Sal, are you sure? What makes you think you won't be safe? He said, just the way the men were talking out there, he had a feeling that he couldn't take a chance on his safety.

Q. And what did he say specifically if anything about his own feelings about supporting or not supporting the union?

A. He said he wouldn't go for the union if he had the opportunity. He would not go for it.

[168] Q. Let's go back a second. Aliberti's duties were what?

A. He was a maintenance foreman.

Q. And Mr. Morle's duties?

A. He was a lay-out man, working foreman and lay-out man.

Q. All right. Richard DeLarda. What were his duties?

A. Richard DeLarda was a welder.

Q. And what information did you have when you got these telegrams about Mr. DeLarda?

JUDGE ZANKEL: Excuse me. Can we be sure the spelling is correct? It's capital D-e, capital L-a-r-d-a?

THE WITNESS: Yes, your Honor.

JUDGE ZANKEL: Thank you.

BY MR. O'REILLY:

A. Richard DeLarda did not speak to me personally. I heard through my secretary, Pat Ferrera, that he had told her that he would not be coming back to work for our company.

MR. HERBSTER: Objection. Motion to strike.

MR. O'REILLY: Your Honor, may I indicate that the secretary that made the comment is in the room and is prepared to testify if that becomes a problem.

JUDGE ZANKEL: And then what you're telling me is [169] that the material is not being offered for its

use of what Mr. DeLarda purportedly said?

MR. O'REILLY: It's only being offered as an indication of the reasonableness of the company's belief that, based on that information, it did not feel that Mr. DeLarda would be considered any longer an employee of the company.

JUDGE ZANKEL: Mr. Herbster, do you want to say anything more about this particular objection?

MR. HERBSTER: I still have a standing objection, your Honor.

JUDGE ZANKEL: Well, the evidence is not being offered for the truth of what this witness or rather apparently said. I'm going to have to receive it. Overruled.

(Pause)

BY. MR. O'REILLY:

Q. And had that information been conveyed to you prior to your meeting on the 28th?

A. Yes.

Q. Of November?

A. Yes.

Q. John Duckworth. What's his position?

A. John Duckworth is the working foreman for the shipping department.

[170] Q. And as working foreman, what are his functions in the shipping department?

A. He would schedule the men for driving. He would recommend disciplines or recommend hiring or disciplinary action. His main function was scheduling the men in the shop.

Q. Who supervises the men in their day-to-day operations?

A. John Duckworth.

Q. And if the men have personal problems at home and want time off, who do they go to see?

A. John Duckworth.

Q. And if the men have vacation problems, who do they go to see?

A. John Duckworth.

JUDGE ZANKEL: Excuse me, Mr. O'Reilly. On General Counsel 10 Duckworth is listed as a unit employee.

MR. O'REILLY: That's correct, your Honor.

JUDGE ZANKEL: And identified as a driver.

MR. O'REILLY: That's correct, your Honor. He's a driver in the shipping –

JUDGE ZANKEL: I'm saying what he's identified as on GC-10.

MR. O'REILLY: That's correct, your Honor.

JUDGE ZANKEL: Is it the Respondent's position he [171] is not a unit employee?

MR. O'REILLY: No, that's not our position.

JUDGE ZANKEL: Then what's the point of this interrogation? It's confusing, in my view.

MR. O'REILLY: He's an employee who wears two hats.

JUDGE ZANKEL: Well, why do we have to know his non-unit hat?

MR. O'REILLY: Because, as I understand, some of the recent board decisions, there would be evidence that Mr. Duckworth passed on to upper management representatives information concerning the sentiments of other unit employees. And the Board decisions seem to say that if that comes from this source of an individual who does wear at least a management hat in addition to his bargaining unit hat, it can be utilized by managmeent as a legitimate, good faith basis for believing that those referenced employees no longer support the union.

JUDGE ZANKEL: Thank you.

MR. O'REILLY: As opposed to information coming from a rank and file bargaining unit employee.

JUDGE ZANKEL: Thank you for the explanation.

BY MR. O'REILLY:

Q. And how long has Mr. Duckworth been a working foreman at the facility?

[172] A. Approximately two to three years.

Q. And does he occasionally attend management meetings on various sales, promotions on manufacturing points?

A. Yes.

Q. And did Mr. Duckworth work during the picketing?

A. Yes, he did.

Q. And what did you ascertain with regard to Mr. Duckworth's support or non-support of the unit?

A. John Duckworth has always been critical of the union. He has oftentimes told me that he really felt the union wasn't representing the men. He didn't want a union. And he told me also that his entire shipping department felt the same way he did on this matter. And John Duckworth resigned, I believe, immediately on the strike and continually crossed the picket line.

Q. And did he advise you that he had resigned immediately?

A. Yes.

Q. Now, when he indicated to you that his entire shipping department did not support the union, how many people – first of all, when was that?

A. Right immediately – well, immediately when the strike started. But previous to the strike, he would often make comments to that effect.

[173] Q. Okay. And how many people were then in the shipping department? And if you could, recall them by name.

A. Well, let's see. Their names were James Chiasson, Stephen Brodeur, Dave Duplisea, Mike Barbour. Let's see. I belive that's it.

Q. So the shipping department –

A. At the beginning of the strike?

Q. Yes.

A. Okay, yes.

JUDGE ZANKEL: Excuse me. Can I have a spelling of those names for the record?

MR. O'REILLY: Chiasson is C-h-i-a-s-s-o-n. Brodeur is B-r-o-d-e-u-r. Duplisea is D--u-p-l-i-s-e-a. And Barbour is B-a-r-b-o-u-r.

JUDGE ZANKEL: Thank you.

BY MR. O'REILLY:

A. I just remembered another gentlemen. It was Richard Boudreau.

Q. And that's B-o-u-d-r-e-a-u?

A. Correct. I believe that's all.

Q. So when your foreman indicated to you the men in the shipping department did not support the union, all of these gentlemen you just listed were in the shipping department?

A. Yes.

[174] Q. Robert Cibelli. What did you ascertain about his feelings?

A. Robert Cibelli was one of the three remaining picketers.

Q. As of when?

A. As of November 18th. So he and the other two picketers came into the office, wanting to speak to Manlio and me.

Q. When did they do that?

A. On the 18th.

Q. This was the last day of picketing?

A. Yes.

Q. All right.

A. This was the day Rocco Aliberti went on his way and talked to them. Anyway, they came back into the shop –

Q. Now, was this after Mr. Aliberti had the discussions you described earlier with you?

A. Yes.

Q. All right.

A. And wanted to come back to work. And he told me that he could not bring himself to cross the picket line because of fear, physical fear. But he wanted to come back to work and wanted to know if he was welcome. I said, of course you're welcome. Come on anytime you want. He said he would come back the following Monday, and he was going to [175] resign from the union.

Q. Did he in fact come back to work the following Monday, which would be the 21st of November?

A. Yes.

Q. And did he indicate to you at that time that he had resigned from the union?

A. I don't recall.

Q. Did he ever indicate to you that he had resigned from the union?

A. Yes, during that week. He made the same statement to my brother Anthony Auciello about being fearful of crossing the picket line.

Q. Was this in your presence?

A. No.

Q. Okay. Now, had he made any comments, other than what you just mentioned with regard to his personal feelings about the union?

A. Yes. When he came in on the 18th he said he had really lost, whatever the word, respect for the union and was no longer a union supporter.

Q. Now, was there anyone else present when this was said?

A. Yes, Manlio DeGrandis, my shop superintendent.

Q. All right.

A. And the other two picketers, Gary Boudreau and Ed [176] Windsor.

Q. The three of them –

A. The three of them came together.

Q. Okay.

A. And talked to me.

Q. On any other occasion, did Mr. Cibelli either state sentiments indicating support or lack of support for the union?

A. Well, after he came back to work, he was just plain happy that there was no union there anymore.

Q. And did he say that to you?

A. He mentioned that – this is a much nicer shop now without a union.

Q. And was this said prior to your telegram being sent to the union?

A. Yes, the week before the telegram. That's why I was so surprised to see the telegram.

Q. Okay. Joseph Parenti. Was he the steward?

A. Yes, he was the steward.

Q. What information as of the 28th of November, when you sent the telegram, what information did you have with regard to the status of Mr. Parenti?

A. I heard, not from himself personally but from my shop superintendent –

Q. That's –

[177] A. Manlio DeGrandis.

Q. Why don't you spell that for the record?

A. That's DeGrandis, capital D-e, capital G-r-a-n-d-i-s.

Q. And his first name?

A. Manlio, M-a-n-l-i-o. He had called Manlio on the telephone and stated that he would not be coming back to work. He had gotten a full-time job at Wyman Gordon and was very happy there. And told him that that was it, basically. And I heard that confirmation of his working

there from another worker, Paul McCarthy, who came in on that same day, the 18th, to tell us he wouldn't be coming back. And he mentioned the fact – when he saw Manlio and me together, that Joe Parenti was working full-time and wouldn't be coming back. And also Kenny Seaver, another fellow who was working full-time, I believe at Antonelli at that time, and wouldn't be coming back.

Q. And just for the record, Wyman Gordon is located where?

A. Grafton or Worcester. I'm not sure.

Q. And that's approximately how far from your plant?

A. Oh, 25 minutes, I guess.

Q. And Antonelli is located where?

A. Antonelli is down in, were [sic] located in Quincy.

Q. What's [sic] about what?

[178] A. An hour.

Q. From your plant?

A. Yes.

Q. Edward Windsor.

A. Ed Windsor was one of those three fellows that came in together. And he essentially stated the same thing that Bob Cibelli said. That he wanted to come back to work and asked if it would be okay if he didn't come back the following Monday, but the next Monday, which would have been the 28th of November, because it was his birthday, and he wouldn't reach a certain age – he didn't want to jeopardize his union pension. So Manlio and I said, sure. And that's when he did in fact come back on the – he had promised us on the 18th that he would be back on the 28th.

Q. And did he come back on the 28th?

A. On the 28th he came back.

Q. And do you know did he ever resign from the union?

A. I don't know.

Q. Did he ever indicate to you that he intended to resign from the union?

A. I don't recall.

Q. James Chiasson.

A. James Chaisson was one of the drivers, and he resigned I believe immediately.

Q. From the union?

[179] A. Yes, immediately when the strike started. And he crossed the picket line and worked throughout the strike. I heard, not from him directly but through his supervisor, John Duckworth, that he no longer wished to have a union in there.

Q. And did you hear that during the course of the strike?

A. From John Duckworth.

Q. Yeah, that's what I meant.

A. Yes.

Q. All right. Stephen Brodeur.

A. Stephen Brodeur, essentially the same thing as James Chiasson. He was a driver. He was even more outspoken. He used to talk about how the union was [sic] joke. This I heard directly from him and John Duckworth. And how he was just so happy that the union wasn't there anymore. He also resigned immediately and crossed the picket line and worked throughout the strike.

Q. And these comments with regards to his feelings concerning the union – were they made during the strike to you?

A. Yes.

Q. Paul McCarthy.

A. Paul McCarthy came in the morning of the 18th –

Q. First, what's his position?

[180] A. He is a welder.

Q. All right.

A. He came in the morning of the 18th and again told Manlio and me together that he would not be coming back, was working in a machine shop and applied for a full-time position as a Postman, I believe.

Q. Did he say what the [sic] machine shop was that –

A. No. He might have, but I forgot.

Q. Okay. All right.

A. There again, he was regretful that things worked out the way they did. He wished us the best of luck, volunteered that information that I said about Kenny Seaver working at Antonelli, Joe Parenti was working at Wyman Gordon. He said he would be happy to work for us part-time if we wanted him to. He indicated and told me that as far as he could tell, most of the men that he talked to had no longer wished to have a union in the company. They were quite upset about the way the union handled it, telling the men was [sic] going on and so forth. And he indicated that if there were an election, he would vote against it and felt that most of the men would also.

I also heard there again, not directly but from my brother Anthony, that he had told Anthony that he was afraid to cross the picket line.

Q. And was this discussion with Paul McCarthy that [181] you had just related – was that prior to your sending the telegram to the union?

A. Yes, I believe it was the morning of the 18th.

Q. The next employee is Giao, G-i-a-o, Huynh, H-u-y-n-h.

A. Giao is a welder in the shop. He resigned immediately.

Q. When you say he resigned –

A. Well, he told my shop superintendent that he resigned. And my shop superintendent told me –

Q. When you say resigned, are you talking about

resigned from the company or from the union?

A. From the union. And he crossed the picket line and worked throughout the strike. He told Manlio, my shop superintendent, that he didn't want a union there. He was happy there was no union there.

Q. And your shop superintendent conveyed this information to you?

A. To me.

Q. And did he convey that information to you prior to your sending the telegram on the 28th?

A. Yes.

Q. Gary Boudreau.

A. Gary Boudreau was one of the three men again who came in the office that day. And he was quite disgusted, [182] very disgusted with the union. The union wasn't talking to him, wasn't telling him anything. He wanted to come back to work. And again, we said fine, come whenever. He came back the following Monday and told me that he was going to resign on Friday and then I believe during that week he said yes, I think I heard from Manlio that he had resigned.

Q. And that's the week of November 21st?

A. He came back on the 21st.

Q. So as of the time you had sent the telegram, he had made these comments to you, had come back to work and had stated to managment that he had resigned from the union?

A. Yes.

Q. Kien Nguyen. And the spelling of that is K-i-e-n, N-g-u-y-e-n.

A. Kien came back on the 28th. But he told us he was coming back on the 28th on [sic] the 18th. Again, he came in on the 18th.

Q. This was the 18th of November?

A. The 18th of November. And said that all along he

had said he would come back to work when Eddy Windsor came back to work. Eddy Windsor was his working foreman. And when he heard that Ed was going to come back on the 28th, he said I'll come back on the 28th also.

(Pause for tape change)

[183] Q. And he said this to you on the 18th?

A. He said this to Mr. Manlio and me, right. He came in the shop. And he told us that he had resigned the same night. He had told us that he had resigned that very same night, the same night of the strike vote.

Q. So that's back to October 13th, correct?

A. Yes, that's what he told us. He said, I already resigned. I just want to come back to work.

Q. Sang Nguyen, S-a-n-g, N-g-u-y-e-n.

A. Again, Sang resigned right away.

Q. Again, please indicate on the record when you say resigned, are you referring to resigning from the company or from the union?

A. From the union. There again, from my shop superintendent I found out he resigned. I know he immediately crossed the picket line and worked throughout the strike. Again, through my shop superintendent I would hear that he was very happy that there was not a union there anymore.

Q. And the shop superintendent is?

A. Manlio DeGrandis.

Q. Okay. Kenneth Seaver. What was his position?

A. He was a layout man. He picketed right up until the last day of picketing, which was the 18th. He came in that morning to pick up his tools. He was one of the few [184] men who had some of his own tools in the shop. He came in to pick up his tools and saw me in the morning. He said he wouldn't be coming back. He was going to Florida.

He came back a little while later in the morning and told my shop superintendent that he had inadvertently left some more tools there and came to pick them up. He told him that he was going to work at Antonelli Iron Works and he would definitely not be back, and he used very strong language.

(Pause)

Q. On Richard Boudreau, what information did you have concerning him when you sent the telegram?

A. Well, I remember about Richard Boudreau that he was another person who was interested in getting rid of the union.

Q. And how did this come to your attention?

A. Through my shipping supervisor, John Duckworth, and also Gerald Sauer, our accountant, had told me that he had come to him to find out how to go about getting rid of the union. And he said, well, he had given him the name of the NLRB.

Q. Who gave –

A. Gerald Sauer.

Q. Gave to Mr. Boudreau the name of the NLRB?

A. Right.

[185] Q. And who indicated that to you?

A. Both John Duckworth and Gerry Sauer.

Q. And did they indicate when all of this happenes [sic]?

A. Well, this was around the month of September, before the negotiations took place.

Q. Now, Mr. Boudreau – did he work at all during the strike?

A. No.

Q. David Duplisea.

A. David Duplisea came back to work after the picket line was through. He was afarid to cross the picket line, according to what he told Scott Duplisea, his brother who is a management person in our company. That he

was afraid to cross the picket line because he worked as a – his main job wa [sic] a fireman. He belonged to the fireman's union. He was a part-time truckdriver for us. And then he was a PFO, or whatever the union measures are from one union to another. He indicated also through Scott, his brother, that he was against the union in this company of ours – that we didn't need one. And he would have voted against it if he had the opportunity.

Q. And Mr. Duplisea, is it your understanding he resigned from the union?

A. Yes.

Q. And this was after the picketing was over, is that [186] correct?

A. Yes.

Q. But prior to your telegram of the 28th of November?

A. Correct.

Q. And were you aware of that fact when you sent the telegram on the 28th?

A. Yes.

Q. Michael Coyne, C-o-y-n-e.

A. Michael Coyne. Um, he came into the shop, again around – I'm going to guess the middle of November or before the 28th. And he just wished me luck. He said he's sorry the way things worked out, but he had found another job elsewhere and would not be coming back.

Q. And did they have personal lockers there for tools and –

A. Well, he was picking up some – he was one of the fellows that had some tools, and he was picking up his tools at the same time.

Q. Did he indicate where this other position was that he had?

A. It was a shop in Worcester. And no, he did not. It was just a small shop. That's all he said.

Q. Paul Greenglass.

A. Paul is very, very outspoken.

[187] Q. Well first, what was his position?

A. Paul, which?

Q. Greenglass.

A. Greenglass was a welder. He was very, very outspoken against the union. The night the strike vote was taken, he came back talking about how crazy those guys are that support the union. The company would be better off without a union. He continuously – he crossed the picket line and worked throughout the strike. He made these remarks not only to me, but to other people in the company – Manlio, Scott Duplisea, Michael J. Auciello. He was very, very outspoken.

Q. And –

A. It was clear in my mind he was not a union supporter.

Q. And did he continue to work during the picketing?

A. Yes.

Q. And did you have information concerning whether he had resigned from the union?

A. He reportedly told my supervisor, the superintendent, that he had resigned. So I had reason to believe he had.

Q. And were you aware of this prior to sending the telegram?

A. Yes.

[188] Q. Quang Nguyen, Q-u-a-n-g, N-g-u-y-e-n.

A. Quang came in on the 18th.

Q. November 18th?

A. November 18th. He indicated that he had been afraid to cross that line again for personal safety reasons.

Q. Who did he say this to?

A. To me and Manlio together.

Q. All right.

A. And that he would be back to work for us on the 28th of November, the week after – a week from the following Monday. And he also indicated that he was going to resign from the union.

Q. Now, does he have contact with John Duckworth at all?

A. Not really. He's not in his department. However, all the men talk to each other up there in the shop.

Q. Had Mr. Duckworth passed any information on to you concerning Quang Nguyen?

A. There was a time when, yes. Out at the coffee truck Quang made some remarks about how he really thought the union was a mistake and a joke, we didn't need one – that type of thing.

Q. And was this information passed on to you by Mr. Duckworth?

A. Yes.

[189] Q. And were you aware of that information when you sent the telegram of November 28th?

A. Yes.

Q. Michael Barbour.

A. Michael Barbour worked in John Duckworth's department. He was on vacation on the day of the strike. And John Duckworth told me that he had called him, told him what had happened and told him about the strike. And Mike indicated he would be back to work on the Monday following. And in fact he did. He crossed the picket line, came to work. And John told me he had resigned I believe on that Monday from the union.

Q. Just on your last sentence. Do I understand that John Duckworth told you that Michael Barbour had stated he had resigned from the union?

A. Yes.

Q. And you were aware of that information when you sent your telegram?

A. Yes.

Q. Phuc Tran, P-h-u-c, T-r-a-n. What information do you have with regard to him, or what information did you have as of the 28th of November?

A. Well, I know that he had crossed the picket line and worked throughout the duration of the strike. I knew from Manlio, he had told Manlio that he had resigned I think [190] right away from the union. He was another fellow that used to make comments to Manlio, Manlio told me, about how this place was a much happier shop without the union.

Q. And were you aware of that prior to sending the telegram on the 28th?

A. Yes.

Q. Frank Tomolillo.

A. Frank Tomolillo picketed the first half day on the Friday when the strike started. He came in at noontime. He said, I've had it with this union. I'm going to resign right away.

Q. Who did he say this to?

A. Me. He said it to me. And that was it. He didn't picket anymore, and he worked throughout the strike.

Q. He crossed the picket line every day?

A. Yes.

Q. Did he ever make any comments with regard to his feelings concerning the union?

A. He was not – general comments about, this union is for the birds. What do we have this union for? He would say things like that to me often. He'd say things like that to my brother Mike quite a bit.

Q. Now. Mr. Tomolillo – would you describe his duties? Was he a member of the union, to your knowledge?

A. Well, originally he was a layout man throughout [191] the shop.

Q. Why don't you just describe to the Judge what a layout man does?

A. A layout man is a man who reads a blueprint and assembles things and gets them ready for the welder. He's kind of like a very crucial experienced type of person.

Q. He doesn't do any actual welding –

A. No, no. He would do tack welding, assembly type welding. And the welder would do the finished bulk of the welding.

Q. Okay.

A. He was a layout man for many years, then he became a working foreman. He has been with the company for many, many years. And more recently, in the last ten years or so, he has been in the estimating department. But he retained his union membership so that he on occasion could go out and work in the shop as a layout man.

Q. Have there been occasions in the last ten years where he does go out and do work in the shop?

A. Yes.

Q. And can you give us some examples of those?

A. Well, I can't remember the jobs specifically. But when his experience was needed, when we were short handed or whatever, we would ask him to go out in the shop and do some layout work.

[192] Q. And would he work with the layout men as far as preparing their jobs for the layout men?

A. He would probably work with a mechanic when he was doing this.

Q. I see. And has he been – all the benefits that are set forth in the collective bargaining agreement, vacations, holidays – does he receive those benefits?

A. Yes.

Q. And does he have his dues paid under the contract with the union?

A. Yes. He's paying dues forever. He's always been part of the welding team there.

Q. Now, after the commencement of the picketing activity, did you engage supplementary employees?

A. Yes.

Q. And was one of those employees Gerardo Mazzola?

A. Right, correct. Gerardo Mazzola.

Q. When was he employed?

A. He was retired from our company.

Q. He had worked for you in the past –

A. Yes.

Q. He had retired?

A. He had worked – we asked him to come back and work part-time after the strike started to help get the work out the door.

[193] Q. And did he have peculiar restrictions as to the amount of hours that he could work for you?

A. Yes.

Q. What were those?

A. He could only work, I believe, less than 40 hours in any one month.

Q. And was that related to his pension eligibility?

A. That, I believe, was the reason.

Q. That if he worked more than 40 hours a month in the trade, he would be jeopardizing his pension. Is that correct?

A. That's as I understand it.

Q. All right. So did he work the 39 hours or so on a monthly basis –

A. Right.

Q. Durin [sic] the course of the picketing?

A. Yes.

JUDGE ZANKEL: Can you spell his name please?

THE WITNESS: T-o-m-o-l-i-l-l-o.

JUDGE ZANKEL: No, Mazzola.

THE WITNESS: Oh, I'm sorry. M-a-z-z-o-l – one l?

MR. O'REILLY: Two L's.

THE WITNESS: It's supposed to be one L.

JUDGE ZANKEL: Two Z's, one L.

MR. O'REILLY: Right. That seems to be the [194] consensus, your Honor. Two Z's and one L.

JUDGE ZANKEL: Isn't that like the margerine [sic]? Same spelling? Okay.

BY MR. O'REILLY:

Q. And did he continue working – was he employed during the first week of the picketing?

A. I believe he was.

Q. And did he continue on this 39-hour basis? At least was he still employed at the end of the picketing?

A. Yes.

Q. And was he still employed at the time of your telegram?

A. Yes.

Q. Now, during the course of the time that he was working for you on the basis you have just described, did he make any comments with regard to his feelings concerning the union?

A. Gerry Mazzola was very outspoken throughout his career at Auciello Iron Works about anti-union feelings.

Q. And what type of work was he doing?

A. He was a layout man.

JUDGE ZANKEL: The question was, during the period of the strike. Was he saying something something about the union?

THE WITNESS: Yes, your Honor. He made frequent [195] remarks of what's going on with those guys? Why do they need a union here? He was just very clearly anti-union.

BY. MR. O'REILLY:

Q. Did he make any comments about his own personal feelings concerning the support or lack of support for a union?

A. Yes, he did.

Q. What were those?

A. He said if he had the occasion, he would vote against the union. And he did not feel –

Q. Did he say this to you?

A. He did not feel that – he did not want a union himself and that a lot of the men felt the same way.

Q. Now, did he say this to you?

A. Yes. He told me that many a time. And he told Manlio that. He told Mike Auciello that. They told me he told them that.

Q. ANd [sic] he crossed the picket line each day that he worked, is that correct?

A. He crossed the picket line to work. I believe it was starting the first week of the strike.

Q. Van Lee, V-a-n, L-e-e.

A. Van Lee was a welder. He did not – he had applied to work at Auciello Iron Works before the strike, I believe a week before the strike started. And he came to work, [196] started working for us I believe the first week of the strike. He crossed the picket line and worked throughout the strike.

Q. And did he ever join the union, to your knowledge?

A. No, he never joined. Again, through Manlio, he would make remarks that he was not a union supporter.

Q. And did Manlio pass this on to you?

A. Yes.

Q. And you were aware of those remarks when you sent the telegram on the 28th?

A. Yes.

Q. Michael Connolly.

A. Michael Connolly was hired I believe in the first week or two following the strike. He was hired to replace one of the men in the receiving department. John Duckworth –

Q. And the receiving department is part of the original bargaining unit?

A. Yes, the shipping/receiving department. There again, John Duckworth made remarks to me that Connolly wasn't a union brother.

Q. And he crossed the picket line each day?

A. Yes.

Q. Did he ever join the union?

A. No.

[197] Q. And was he employed as of the 28th of November?

A. Yes.

Q. And by the way, Van Lee, was he also employed on that same 28th?

A. Yes, he was.

Q. Clayton White.

A. Clayton White. He answered an ad that we had placed in the newspaper during the strike. He worked in the yard, a yard man under Manlio DeGrandis.

Q. And under Massachusetts law, did you take steps to place any notation on the newspaper ad concerning the existence of a labor dispute?

A. Yes. On the bottom of our ad we had labor dispute.

Q. And Clayton White responded to that ad?

A. He responded to the ad, crossed the picket line, worked throughout the strike. And again, I heard through Manlio that Clayton White was a gentleman who did not wish to have a union represent him.

Q. And is that the – and Clayton White, was he still employed by your company as of the 28th of November,

when you sent a telegram that is marked as General Counsel's Exhibit 8, was sent to Local 501?

A. Yes, the telegram you showed me?

Q. Yes.

[198] A. Yes. The telegram that we sent that following Monday?

Q. That's correct.

A. Yes.

Q. Okay. And is the information concerning what you have just testified, was that the basis for your belief as of the 28th that a union did not represent a majority of the Auciello employees?

A. Yes, it was clear in my mind.

* * *

CROSS EXAMINATION

Q. Mr. Auciello, it seems like you heard some reports and had some employees speak to you about their union sentiments. You just testified to that. That's correct, right?

A. Correct.

[199] Q. And this had been an ongoing thing, this speaking to you about the union, isn't that correct?

A. No.

Q. When did it occur? I thought it was ongoing.

A. No, this all started with the strike.

Q. Can you recall the first date that you found out that people didn't support the union?

A. The night of the strike, when men crossed the picket line.

Q. When was the last conversation that you had with someone that they didn't support the union?

A. I can't recall the last one.

(Pause)

Q. Do you know whether it was November 1st or December 1st or any time frame at all?

A. The discussions about remarks made to me were ongoing during the strike. And I don't really recall the last time someone gave me an anti-type of remark.

* * *

Q. Did you have any conversations with anyone or learn about their sentiments after the 17th?

A. Yes. As I indicated the next day, the 18th, quite a few discussions took place.

[200] Q. Did you have any conversations that you can recall now after the 18th?

A. During that week of the 21st there were discussions, comments that I have indicated.

Q. When did it come to your attention that the union didn't represent in your mind the majority of the employees?

A. It became a serious discussion the morning after we received the telegram indicating that the union had accepted our latest proposal. And we sat down and had a conference, as I indicated, to discuss the telegram that was sent to us. And since in that telegram it had stated – through all our experience of negotiating, we were always told that the men had the last say and the men are the deciding factor. And we went down the list of them and in our minds, what we knew then who had crossed the picket line, who had come back to work, who had told us they worked elsewhere and so forth, and it was just a logical way to respond to that telegram. In our minds, the union no longer represented by a large majority the wishes of the men. So in order to be able to say that in our telegram, we wanted to logically – we logically discussed it, in other words, at that time.

* * *

[203] Q. You wanted employees to resign from the union, didn't you?

A. I wanted employees to work for Auciello Iron Works.

Q. Didn't you want them to resign from the union before they came back to work?

A. I wanted the men to work Auciello Iron Works.

Q. Would you answer the question, Mr. Auciello?

A. No. Resigning was not a condition of working.

Q. Didn't you suggest to them to them [sic] through a letter in October that they should resign and come back to work?

A. No. I gave them the option of resigning to prevent possible union claims.

Q. Do you recall that you wrote under your signature on October 14th about resigning from the union?

A. I recall a letter which mentions in it the option of resigning. I wish you'd stop putting words in my mouth.

Q. I'm just trying to get the facts from you, sir. And let me show you this. There is a typewritten addendum with a resignation.

[204] A. Yes.

Q. Did you prepare that?

A. Yes, I did.

Q. Why did you prepare that, Mr. Auciello.

MR. O'REILLY: Your Honor, I think at this point I'm going to object to discussing this particular document. I think the court, your Honor ruled that it was remotely – might be remotely material. But apparently, it's going to be the subject matter of lengthy cross examination. And I'm going to again raise the objection as to its materiality.

JUDGE ZANKEL: Overruled. Please answer the question.

BY MR. HERBSTER:

A. Yes, I prepared the statement.

Q. Why did you prepare that, Mr. Auciello?

A. So that if an individual wished to resign from the union, they could use that format.

Q. Did any employee ask you to prepare such a resignation form?

A. What the employees did do was indicate a willingness to cross the picket line and work. And upon hearing that, I called up my attorney and stated that to him. And he told me some of the possible repercussions of my men doing that could be that they could be fined. And if those men wished to avoid the possibility of a fine, they [205] may resign from the union. And we discussed how could they resign. And he said, they may make this type of a statement. I said, would it be okay if I drafted that for their resignation if they wish to resign? And he said, that's perfectly fine.

Q. So then your answer would be, if I am correct, that no employee asked you to draft that particular typewritten note?

A. They asked me how could they come back to work without suffering repercussions.

Q. I take it your answer is no, that no one asked you to draft it.

A. They did not say in those words, draft me a letter. I don't see how they could say that.

Q. Let me show you what's been marked as Respondent's Exhibit 2B. Have you seen that before? That's a handwritten resignatiion [sic].

A. Yes, that's correct.

Q. Do you know who prepared that handwritten form without the name or signature filled in?

A. I did, after the conversation I just explained.

Q. And that's your handwriting?

A. Yes, it is.

Q. Had anyone on October 13th or before that time asked you – any employee asked you how to resign from the [206] union?

A. No.

* * *

[228] Q. You had some conversations with Stephen Brodeur about the union?

A. Stephen Brodeur? Um, more so through his supervisor, John Duckworth.

Q. So you didn't have any direct conversations with Stephen Brodeur about the union?

[229] A. I did recall one time, once or twice where Stephen would tell me that he thought the union was a joke. But this was volunteered to me. We didn't explore the comment.

Q. Is that all he said, that he thought the union was a joke?

A. He thought it was unnecessary – it was a joke.

Q. And that was it?

A. Yeah, something like that, yeah.

Q. Did he ever tell you, or Duckworth ever tell you that he was happy the union wasn't there anymore?

A. John Duckworth told me that Stephen Brodeur did not like the union – words to that effect that he thought the union was a joke. That's the way he would say it.

Q. But the specific question was, did he ever say that – did either Duckworth or Brodeur say to you that Brodeur was happy the union wasn't there anymore?

A. No, I don't recall those exact words.

Q. Did you testify on direct examination that Mr. Brodeur told you or Mr. Duckworth told you that Mr. Brodeur said that he was happy that the union wasn't there anymore?

A. If I did, I don't recall saying those exact words.

Q. When would it have been, Mr. Auciello, that Mr. Brodeur told you that the union was a joke or that Mr. Duckworth told you that Mr. Brodeur said the union was a joke?

[230] MR. O'REILLY: Well, which is it?

MR. HERBSTER: I don't know. I'm asking –

JUDGE ZANKEL: Try each statement separately, if you don't mind.

MR. HERBSTER: Okay. Maybe I should clarify.

BY MR. HERBSTER:

Q. Did Mr. Brodeur tell you directly that the union was a joke, or was it otherwise?

A. It was through John Duckworth.

Q. Just for clarification – I don't want to beat a dead horse – but Mr. Duckworth then told you that Mr. Brodeur thought the union was a joke. Is that correct?

A. Um-hum. Yes.

Q. When did Mr. Duckworth tell you this?

A. This would have been immediately following the first few days after the strike started.

Q. Did Mr. Duckworth tell you when Mr. Brodeur said that?

A. Um, not specifically. I can't recall that he said – no, I can't recall that he had told me when he had told him that.

Q. So you don't know whether Mr. Brodeur told Mr. Duckworth that that day or six months before, correct?

A. Correct.

* * *

PATRICIA FERRERA

DIRECT EXAMINATION

[238] Q. And directing your attention to he week of November 18th, 1988, did you have occasion to see Mr. DeLarda?

A. Yes, I did.

Q. And what was the occasion, and if you had a discussion with Mr. DeLarda, would you relate what that discussion was?

A. Yes, sir. He was in the office at the time. And I ran into him in the hall. And we just had a few words. I asked him if he was going to be coming back to work for us. He said no, that he had another job somewhere else and that he would not be back to work for Auciello.

Q. And was that the same day that the picket line finally went down?

* * *

CROSS EXAMINATION

[240] JUDGE ZANKEL: Ms. Ferrera, can you tell us with greater certainty what day you spoke with Mr. DeLarda?

THE WITNESS: I want to say it was around the 18th of November.

* * *

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS OF AUGUST 9, 1989

RALPH AUCIELLO (RECALLED)

CROSS EXAMINATION

[253] Q. Now, Mr. Auciello, you say that with regard to General Counsel 14 – the one with Auciello Iron Works on the top – you saw that on November 28th, 1988. Correct?

A. I believe I did.

Q. Do you know if you saw it before that day?

A. I don't believe I did.

Q. Who made those check marks, if you know?

A. I believe it was Attorney O'Reilly.

Q. And how did he come to make those check marks?

A. We were having – discussing the telegram. We were having a meeting, and we were discussing the names of the employees, and how we felt they felt about [254] the union, and he was making these check marks.

Q. After those check marks were made, did that document come back to your possession?

A. Well, I had this in my files. So I must have retained a copy of it.

Q. And you had it in your files with the check marks?

A. Yes, just as – like this.

Q. After the check marks were made, you looked at the check marks and the document. Didn't you?

A. I be – I must have.

Q. The check marks on the left – to the left of the names –

A. Yes.

Q. – what do they mean?

A. I believe they would indicate our opinion as to an individual, who if there were an election, would vote against the union.

Q. The check marks on the right – to the right of the name, what do they mean?

A. In our opinion, the individuals who would vote for the union.

* * *

[256] Q. Directing your attention to General Counsel's Exhibit No. 15, which is the shop employees with the yes, no, will notes – those words on the top, have you seen that before?

A. Yes.

Q. When did you see that?

A. Well, this – this – I made – these were my own check marks, and I don't remember the date that I – that I made these marks.

Q. Well, was it before the document we referred to, General Counsel's 14?

A. Yes. Must have been before.

Q. Why do you say it must have been?

A. Because there are some individuals on this list who we felt less sure of, as to their decision, than there were on this document.

* * *

[257] MR. HERBSTER: Let's just see if we understand that document 15, Mr. Auciello.

There are four columns, and there is a – a column headed Yes, with some words crossed out, and check marks.

BY MR. HERBSTER:

Q. What does that column mean?

A. Those were the individuals – at the time of this meeting, whenever this was held, that we felt very sure would vote against the union, were there an election to be held.

Q. When you say "we", whom do you mean by we?

A. We, the members of that meeting.

Q. Who was at that meeting, if you can recall?

A. Most probably myself, Attorney O'Reilly, and members of management.

Q. Those check marks are your check marks, [258] though. Correct?

A. Yes.

Q. And the column No, what does that mean?

A. That's the column – at that time, that if we had any doubt at all, in your minds, no matter how slight. If any of the individuals in that meeting had doubt in their mind, we would – I – I put a check on that column.

Q. Doubt as to what?

A. How they would – if there were to be an election held, how they would vote.

JUDGE ZANKEL: You inserted the check marks on GC-15?

THE WITNESS: Yes, sir. Yes, Your Honor.

* * *

[259] Q. Now, you based your decision as to where to put the check marks on this document, General Counsel 15 – you based on [sic] that on a number of factors. Didn't you?

A. Yes.

Q. Did you base where to put the check marks [260] on your conversations with employees about their union sentiments?

A. I based it upon the opinion of the people in the room at that time.

Q. And the opinion of the people in the room, that was based on conversations that they had with employees? Is that one thing it was –

A. That was –

Q. – based on?

A. – one of the – that was one of the reasons.

Q. And was it, also, based on resignations from the union?

A. That would have been another indication.

Q. Was it based on people who didn't strike? Was that what it was based on, also?

A. That –

Q. Whether they did or didn't strike, was that one of the factors?

A. That – well, the fact that – yes, that would have been another factor.

Q. And reports that you got from other employees – that supervisors may have gotten from other employees, as to a person's union sentiments, not their own? Was that one of the factors used to –

[261] THE WITNESS: That was the first – the first question, right, was how the people in the room rendered their opinions?

MR. HERBSTER: The first question was – well, let me rephrase it just to make it clear.

BY MR. HERBSTER:

Q. Some people spoke directly to you. Correct? Some employees?

A. Yes.

Q. And whatever they said to you, that was one of the factors that you –

A. Yes.

* * *

[291] Q. Now, let me turn to Mr. Richard Boudreau. Do you remember him?

A. Yes.

Q. I believe you testified that he had tried to get rid of the union, prior to the strike?

A. I testified that that was reported to me. Yes.

Q. And he did strike? He was a picket. Correct?

A. Yes.

Q. You saw him on the picket line?

A. Yes.

Q. In fact, there was a newspaper article published in the local paper sometime in October about the strike. Did you see that at the time that came out?

A. Yes, I did.

Q. You read that, and did you see Mr. Boudreau quoted in there?

[292] A. Yes, I did.

Q. And his comments were in favor of the union in that article. Weren't they?

A. I don't recall his comments.

* * *

[294] JUDGE ZANKEL: Okay. Do you remember the question?

THE WITNESS: Was this comment in favor of the union? Is that your question?

MR. HERBSTER: Yes.

A. I guess so.

Q. And when you read that, you knew that – at that time, that you had heard that Mr. Boudreau had tried to get rid of the union?

MR. O'REILLY: Well, there is no evidence that he read this back in November.

[295] MR. HERBSTER: I asked him that.

JUDGE ZANKEL: He asked him.

THE WITNESS: No, I – I had read this.

MR. O'REILLY: Oh, okay.

BY MR. HERBSTER:

Q. In October?

MR. O'REILLY: I'm sorry.

BY MR. HERBSTER:

Q. Correct?

A. Yes, I was aware of this article.

JUDGE ZANKEL: Right. Right. That's exactly what he said before –

MR. O'REILLY: Okay.

JUDGE ZANKEL: – Mr. O'Reilly.

MR. O'REILLY: I withdraw that.

JUDGE ZANKEL: Okay.

A. And I guess that it appears that he was in favor. He was out there picketing.

Q. And that was at a time after you had heard that he was trying to get rid of the union? Correct?

A. That's correct.

* * *

RECROSS EXAMINATION

[321] JUDGE ZANKEL: Okay. You have General Counsel's 14 and 15 in front of you?

THE WITNESS: Yes.

JUDGE ZANKEL: All right. Now, I recognize you indicated earlier when I questioned you that you are not sure of the precise date General Counsel's 15 [322] was worked on, that is when – the date you put the check marks on. Right?

THE WITNESS: Yes.

JUDGE ZANKEL: But it was at a meeting among the managerial personnel of the respondent?

THE WITNESS: Yes, Your Honor.

JUDGE ZANKEL: And that was a separate meeting from the meeting that you had with those same managers on the 28th of November?

THE WITNESS: To the best of my recollection, it is, Your Honor.

JUDGE ZANKEL: But Mr. O'Reilly was not at that first meeting –

THE WITNESS: No.

JUDGE ZANKEL: – is that correct?

THE WITNESS: Yes, he was.

JUDGE ZANKEL: He was?

THE WITNESS: Yes.

JUDGE ZANKEL: He was at both?

THE WITNESS: Yes.

JUDGE ZANKEL: Can you give us approximately – are you talking in terms of a week, two weeks, or what, something like that? Approximately how long before the 28th did you work on GC-15, at that other meeting?

[323] (Pause.)

THE WITNESS: One to two weeks it the best I can, honestly, remember. I know it had to be toward the end.

* * *

[325] JUDGE ZANKEL: All right. At the time of [sic] just after General Counsel's 15 was prepared, was – was there, at that meeting, a discussion of whether or not the respondent should advise the union that it doubted its majority?

THE WITNESS: No, I don't recall that being a discussion.

JUDGE ZANKEL: Was there a discussion, at that particular meeting, among the managers, that the results of tallying General Counsel's 15 reflected that the union lost its majority?

THE WITNESS: I recall it being in the context of a would there be – if we could have an election today type of scenario, how would the election [326] turn out, and then we said, well, let's find out how we think it would turn out, and that's when I recall the check mark score card thing here.

* * *

[328] JUDGE ZANKEL: Was there any decision made, as to what the next move of the employer would be at that point?

THE WITNESS: No.

* * *

REDIRECT EXAMINATION

[344] Q. Of the employees, that had – in the Labor Board Certification for Local 501, of the employees that had, in 19 – in September and October of 1988, how many of those employees were involved and worked for your company at the time of the election?

THE WITNESS: In the bargaining unit?

MR. O'REILLY: Yes.

A. In the bargaining unit, none.

Q. None. All right. Now, the Judge asked you several questions concerning General Counsel's 14 and 15. General Counsel 14, which is on the Auciello Iron Works letterhead, do I understand that that was put together sometime prior or the day that you sent the telegram for the purposes of your own in-house [345] determination as to whether or not employees supported or did not support the union?

A. Yes.

Q. And do I gather that you met with three or four management people, plus your attorney, and – is that correct?

A. Yes.

Q. And was it the consensus of this group reflected in this General Counsel's 14?

A. Yes.

Q. Now, the earlier document, General Counsel's 15, which is not on your letterhead and has the names plus four columns, for what purpose was that put together? Was that put together for assessing their overall feeling

of management as to the union sentiment among the employees or was that done with regard to a worst case scenario for an election?

A. Yes. As I indicated, we were – the worst case scenario.

Q. And if you felt that the – in any one of the names reflected in General Counsel's 15, if you felt that there was even the slightest possibility of that union – that employee voting for the union, where did you put the check next to his name?

A. In the second column.

[346] Q. Okay. So do I gather from that that there might be employees that you've checked off in the second column that you felt actually did not support the union but that weren't 100% sure of?

A. That's exactly correct.

* * *

MANLIO DEGRANDIS

DIRECT EXAMINATION

[353] Q. All right. On Stephen Brodeur, during the [354] period of the negotiations and the strike, did you have occasion to discuss with him his feelings concerning the union?

A. Stephen Brodeur worked for John Duckworth.

Q. Yes.

A. John Duckworth's office and my office connect, like one big room.

Q. Yes?

A. And one day –

Q. Excuse me, Mr. Duckworth has his own office there?

A. Yes.

Q. Okay.

A. Ya, and they was [sic] Steve Brodeur came in the

morning, and he mention about the union, and all the problem they have and walked down the stairs where he was talking – you know, he don't care about the union, but previous the negotiations this year, several time he mention to me personal that he don't – he doesn't like the union. He doesn't want the union.

Q. Mr. Brodeur said that to you?

A. Yes.

Q. Okay. And did you pass all of that information on to –

[355] A. Yes.

Q. – Mr. Auciello?

* * *

Q. On Paul McCarthy, had he obtained a job elsewhere? Do you know?

A. Yes, the morning of the 18 –

Q. Is this still November 18th?

A. November 18, 1988.

Q. Okay. Yes?

* * *

Q. Okay. And did he – either in that discussion or at any other time that year – state to you his feelings either for or against the union?

A. He was against the union. The main reason was because all the years the people was paid the dues, [356] they never saw not a percent of it. Only the time there with the – for the judge of the contract. The only people they saw all the time was the steward.

Q. And when did he say that to you?

A. Oh, maybe in the summer of the 1988.

Q. Okay. And did you pass all of that information on to Mr. Auciello?

A. Yes. When we was to do the meeting. Yes.

* * *

[358] Q. Okay. On Sang Nguyen – spelled S-A-N-G N-G-U-Y-E-N – did you have occasion to discuss with him, during the period of negotiations and the strike –

A. Sang was one of the three guys that resign the first night, and approach me if he could work because language barrier he has for communication, like I do.

I told – I think so, but I will check, and I mention it to Ralph, if the guys could go back to work right – right away, and Ralph said to me, that he has to check with you, and they draw – typed the letter the way for resign from the union and will have no – that way they have no trouble with the union.

* * *

[359] Q. Now, did Mr. Nyugen [sic] ever indicate to you, at that time or any other time, how he felt about the union?

A. He doesn't like a union. At the time he mention to me guys complaining was – I can't remember exactly word, but just because we talking everyday, the way express himself, I know full fact he – he doesn't like the union.

Q. And did he say this to you directly, or did you hear it from other –

A. No, directly.

Q. Okay.

A. Becuase see when I – after hours I see this guy.

Q. Okay. And was this during the period of the negotiations and the strike?

A. Previous and during the – the – the strike.

Q. Okay. And did you discuss this and pass this information on to –

A. I mention to –

Q. – Ralph?

A. – Ralph, the same was one other guy.

* * *

CROSS EXAMINATION

[362] Q. Mr. Degrandis, you say that some people talked to you about how they felt about the union?

A. Yes.

[363] Q. Did you ever ask anyone how they felt about the union?

A. No.

Q. Let's take the last person you talked about, Quang Nguyen. He told you what, again, about the union?

A. What I just mention before.

Q. You just said it a couple of minutes ago?

A. Ya.

Q. Can you repeat it, again, for me, please?

A. "F" the union. Was nice was no longer the union there. It was on a coffee time – coffee break.

Q. And that was about what day?

A. Oh, the day come back to work. I don't know if it was first day come back to work or the second day come back to work.

Q. The day he came back to work. Was that during the strike?

A. I just mentioned to Mr. O'Reilly, I don't remember if he come back before the strike or if the strike was over.

* * *

[370] JUDGE ZANKEL: If I were Mr. Morle, I would say to you that I have no use for this union? Is that [sic] kind of thing you say he told you?

THE WITNESS: Yes.

JUDGE ZANKEL: When?

THE WITNESS: Several time, even before the strike, way before the strike.

* * *

[372] JUDGE ZANKEL: – do you remember whether Mr. Cibelli told you that he had no respect for the union?

THE WITNESS: Yes.

JUDGE ZANKEL: When did he say that?

THE WITNESS: When he come back to the 18 – the 18 – November 18, when he have the meeting, and even previous – before.

* * *

GERALD SAUER

DIRECT EXAMINATION

[410] Q. Okay. Prior to the negotiations, did you receive any information concerning employee dissatisfaction with the union?

A. The only person that talked to me about dissatisfaction was Dick Boudreau.

[411] Q. And what did he say to you –

A. He –

Q. – and about when was this?

A. It was prior to the negotiations, either around the end of August or the [sic] around the beginning of September. Somewhere around the early part.

He – he came in with John Duckworth, and asked me what they needed to do to get rid of the union, and I told them to call up the NLRB.

Q. Okay.

A. They had – they were not – they asked me to look it up in the telephone book. I looked it up in the phone book. They had a photostat copy of the telephone number, and put the book away, and handed the photostat copy to John Duckworth.

Q. Did you make any further efforts to ascertain what, if anything – what was the gentleman's name again?

A. Richard Boudreau.

Q. What Mr. Boudreau did with this information?

A. He told me that he –

Q. I'm just asking you did you or did you not make any further inquiry?

A. No, I did not.

[412] Q. And did you ever hear anything further in that regard?

A. He – he told me that he called up the NLRB and got the paperwork on it.

Q. Okay. And did you make any further inquiry after that?

A. No, I did not.

* * *

APPENDIX C

[General Counsel's Exhibit 5]

AUCIELLO IRON WORKS INC.

METAL FABRICATORS

560 MAIN STREET
P.O BOX 424
HUDSON, MASSACHUSETTS 01749
508-568-8382

INDUSTRIAL
STRUCTURAL
ORNAMENTAL

October 14, 1988

To: Fellow Employees of Auciello Iron Works, Inc.

For the first time in the 56 years of my family's operating this company, [the union has forced our employees to go out on strike against the company. It is my information that our employees have been misinformed as to the scope of the management offer to settle this controversy.] Management is faced with a drastic increase in the cost of a medical program representing approximately 7% to 8% of the wage scale. The recently expired union agreement called for 25% of that increase to be absorbed by the employees with 75% to be absorbed by the company. The approximate cost of this increase is estimated to be between $.75 and $.85 per hour for each employee. In an effort to resolve this controversy, management yesterday offered to absorb that entire increase with nothing to be absorbed by the employees. In addition to this 7% to 8% increase, management offered to pay a 3% wage increase bringing the total package increase for the first year of this contract to over 10%. Additionally, management offered to pay a 4% increase in the second year and a 5% increase in the third year. This total package increase would be the highest in the industry. To our

amazement the union rejected that proposal and has now forced our employees into a strike position.

It appears this will be a long strike as we are not in a competitive position to pay more than what has already been proposed by management. Many of our employees have privately expressed a desire to continue working as they do not feel the union is representing their interests. My advice to any of you who wish to continue working is to take every step to avoid the union plan to assess fines against employees who work during this strike. Our attorney advises us that in the past the Union has been held in various cases to be entitled to impose fines on members working during the strikes. However, the Supreme Court has recently determined that in order to avoid fines by the Union, employees may tender their immediate resignations to the Union and may, thus,

1. Continue working during the strike and
2. Avoid any ability of the Union to retaliate against them by imposing fines.

Should any employee wish to take advantage of this procedure I have made available to each of you resignation forms. I do wish to make it clear, however, that while I welcome any employee who wishes to work during this strike, it is not a condition of your continuing to work that you resign from the Union and you are welcome to continue working whether you resign or not.

I am hopeful that we will eventually work all of these problems out either with or without the Union.

Sincrely,

Ralph Auciello

Date: _____

To Local 501

(International Assoc. of Bridge, Struc., & Orn. Iron Workers)
826 Washington St.
Braintree, MA 02184

Efective Immediately I am resigning from the union.

Signed: _____

(Auciello Iron Works, Inc., Hudson, MA)

[General Counsel's Exhibit 7]

Western Union
MAILGRAM

MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645
27 AM

4-0060308332002 11/27/88 ICS IPMMTZZ CSP BSNB
1 6178491688 MGM TDMT SOUTH BRAINTREE MA
11-17 0153P EST

SHOPMANS LOCAL UNION NUMBER 501
826 WASHINGTON ST
SOUTH BRAINTREE MA 02184

THIS IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

6178491688 FRB TDMT SOUTH BRAINTREE MA 56
11-27 0153P EST
ICS IPMFONE
RALPH AUCIELLO, 5088352441

33 KINGS MOUNTIAN DR
WEST BOYLSTON MA 01583
DEAR SIRS

AFTER CAREFUL CONSIDERATION THE PROPOSED CONTRACT SUBMITTED BY YOUR COMPANY ON NOVEMBER 17 1988 TO LOCAL UNION 501 HAS UNANIMOUSLY RATIFIED IN ITS ENTIRETY BY OUR NEGOTIATING COMMITTEE, THE STRIKE AT YOUR PLANT HAS CONCLUDED AS OF THIS DATE AND EMPLOYEES HAVE BEEN ADVISED TO RETURN TO WORK ON MONDAY NOVEMBER 28, 1988, SIGNED
DAVID M MORTIMER PRESIDENT OF LOCAL
UNION NUMBER 501

13:54 EST
MGMCOMP

[General Counsel's Exhibit 8]

Western Union
MAILGRAM

OREILLY AND GROSSO BC
1300 A WORCESTER RD
FRAMINGHAM MA 01701 28AM

4-0252688333003 11/28/88 ICS IPMBNGZ CSP B8NB
2 5088751220 MGM TDBN FRAMINGHAM MA
11-28 -331P EST

IRONWORKERS LOCAL 501
826 WASHINGTON ST
BRAINTREE MA 02184

THIS IS A CONFIRMATION COPY OF A TELEGRAM ADDRESSED TO YOU:

RE: AUCIELLO IRON WORKS

EMPLOYER POSITION IN RESPONSE TO YOUR NOTICE OF NOVEMBER 27 IS AS FOLLOWS: 1. EMPLOYER OFFER OF NOVEMBER 17 WAS REJECTED BY LOCAL 501 AND IS NO LONGER OPEN FOR UNILATERAL ACCEPTANCE. 2. IN ANY EVENT YOUR CLAIMED RATIFICAATION LIMITED TO NEGOATIATING COMMITTEE AND EXCLUDING RANK AND FILE MEMBERSHIP IS INSUFFICIENT, EMPLOYER NOW HAS REASON TO BELIEVE THAT LOCAL 501 NO LONGER REPRESENTS A MAJORITY OF EMPLOYEES IN THE APPROPRIATE UNIT AND THEREFORE DISAVOWS ANY OBLIGATION TO CARRY ON FURTHER NEGOTIATIONS.

JOHN D O'REILLY III
COUNCIL FOR AUCIELLO IRON WORK
1300A WORCESTER RD
FRAMINGHAM MA 01701

15:32 EST
MGMCOMP

[General Counsel's Exhibit 14]

AUCIELLO IRON WORKS INC.

METAL FABRICATORS

560 MAIN STREET
P.O BOX 424
HUDSON, MASSACHUSETTS 01749
508-568-8382

INDUSTRIAL
STRUCTURAL
ORNAMENTAL

BEFORE STRIKE

✓ Rocco Aliberti
✓ Salvatore Morle
Richard DeLarda ✓
James Hanagan ✓
✓ John Duckworth
✓ Robert cibelli
Joseph Parenti ✓ (2)
✓ Edward Winsor
✓ James Chiasson
✓ Stephen Brodeur
✓ Paul McCarthy
✓ Giao Huynh
✓ Gary Boudreau
✓ Kien Nguyen
✓ Sang Nguyen
Kenneth Seaver ✓
✓ Richard Boudreau
✓ Dave Duplisea
Michael Coyne ✓
✓ Paul Greenglass
✓ Quang Nguyen (?)
✓ Michael Barbour
✓ Phuc Tran

+3

[General Counsel's Exhibit 15]

CLOCK #	SHOP EMPLOYEES		YES CROSSED PICKET LINE	NO WILL NOT COME BACK (HAS ANOTHER JOB)	NOTES
19	Aliberti, Rocco	|		✓	
24	Morle, Salvatore	|	✓		WILL START DEC 5
26	DeLarda, Richard	|		✓	
64	Hanagan, James	|		✓	
67	Duckworth, John	ⓘ	✓		
101	Cibelli, Robert	|	✓		
142	Parenti, Joseph	|		✓	
144	Winsor, Edward	|		✓	
164	Brodeur, Stephen	ⓘ	✓		
172	McCarthy, Paul	|		✓	
178	Huynh, Giao Van	ⓘ	✓		
179	Boudreau, Gary	|	✓		
188	Nguyen, Kien	|	✓		
192	Nguyen, Sung	ⓘ	✓		
196	Seaver, Kenneth	|		✓	
201	Duplisea, David	|		✓	
202	Boudreau, Richard	|		✓	
204	Coyne, Michael	|		✓	
210	Chaisson, James	ⓘ	✓		
211	Greenglass, Paul	ⓘ	✓		
213	Nguyen, Quang	|	✓		
216	Barbour, Mike	ⓘ	✓		
223	Tran, Phuc Van	ⓘ	✓		
	LEE (NEW MAN)		✓		
	CLAYTON		14	9	
	MIKE CONLEY		1	1	
			15	10	= 23

[General Counsel's Exhibit 17]

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

TYPE OF ELECTION
(Check one)

☐ Consent Agreement
☐ Stipulation
☐ Board Direction
☒ RD Direction

(Also check box below where appropriate)
☐ 8(b)(7)

Case No. 1-RC-14,914

AUCIELLO IRON WORKS, INC.

Employer

and

SHOPMEN'S IRONWORKERS LOCAL UNION NO. 501 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, AFL-CIO

Petitioner

CERTIFICATION OF REPRESENTATIVE

An election having been conducted in the above matter under the supervision of the Regional Director of the National Labor Relations Board in accordance with the Rules and Regulations of the Board; and it appearing from the Tally of Ballots that a collective bargaining representative has been selected; and no objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefor;

Pursuant to authority vested in the undersigned by the National Labor Relations Board, IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for

Shopmen's Ironworkers Local Union No. 501
of the International Association of Bridge,
Structural and Ornamental Ironworkers,
AFL-CIO

and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

UNIT:

All production and maintenance employees of the Employer's plant located in Brighton, Massachusetts, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

Signed at Boston, Massachusetts
On the 30th day of March 1977

On behalf of
NATIONAL LABOR RELATIONS BOARD

/s/ Robert R. Fuchs
Regional Director, Region One
National Labor Relations Board

[SEAL]

[Respondent's Exhibit 2a]

Date: Oct. 13, 1988

To Local 501
(International Assoc. of Bridge, Struc., & Orn. Iron Workers)
826 Washington St.
Braintree, MA 02184

Efective Immediately I am resigning from the union.

Signed: /s/ Stephen C. Brodeur
STEPHEN C. BRODEUR

(Auciello Iron Works, Inc., Hudson, MA)

[Respondent's Exhibit 2b]

DATE: 10 13, 1988

TO LOCAL 501
(INTERNATIONAL ASSOC. OF BRIDGE, STRUC., & ORN. IRON WORKERS)
826 WASHINGTON STREET
BRAINTREE, MA. 02184

EFFECTIVE IMMEDIATELY I AM RESIGNING FROM THE UNION.

SIGNED,
/s/ Nguyen Sang Trung
NGUYEN SANG TRUNG

(AUCIELLO IRON WORKS, INC., HUDSON, MA.)

[Respondent's Exhibit 2c]

DATE: 10 - 13 - 1988

TO LOCAL 501
(INTERNATIONAL ASSOC. OF BRIDGE, STRUC., & ORN. IRON WORKERS)
826 WASHINGTON STREET
BRAINTREE, MA. 02184

EFFECTIVE IMMEDIATELY I AM RESIGNING FROM THE UNION.

SIGNED,
/s/ Phuc Van Tran
PHUC VAN TRAN

(AUCIELLO IRON WORKS, INC., HUDSON, MA.)

[Respondent's Exhibit 2d]

DATE: OCT, 13 - 88

TO LOCAL 501
(INTERNATIONAL ASSOC. OF BRIDGE, STRUC., & ORN. IRON WORKERS)
826 WASHINGTON STREET
BRAINTREE, MA. 02184

EFFECTIVE IMMEDIATELY I AM RESIGNING FROM THE UNION.

SIGNED,
/s/ Giao Huynh

(AUCIELLO IRON WORKS, INC., HUDSON, MA.)

[Respondent's Exhibit 3a]

Date: Oct 14/88

To Local 501
(International Assoc. of Bridge, Struc., & Orn. Iron Workers)
826 Washington St.
Braintree, MA 02184

Efective Immediately I am resigning from the union.

Signed: /s/ James P. Chiasson
JAMES P. CHIASSON

(Auciello Iron Works, Inc., Hudson, MA)

[Respondent's Exhibit 3b]

Date: 10/14/88

To Local 501
(International Assoc. of Bridge, Struc., & Orn. Iron Workers)
826 Washington St.
Braintree, MA 02184

Efective Immediately I am resigning from the union.

Signed: /s/ Paul N. Greenglass
PAUL N. GREENGLASS

(Auciello Iron Works, Inc., Hudson, MA)

[Respondent's Exhibit 3c]

Date: 10 - 14 - 88

To Local 501
(International Assoc. of Bridge, Struc., & Orn. Iron Workers)
826 Washington St.
Braintree, MA 02184

Efective Immediately I am resigning from the union.

Signed: /s/ John Duckworth
JOHN DUCKWORTH

(Auciello Iron Works, Inc., Hudson, MA)

[Respondent's Exhibit 3d]

Date: OCT 17, 1988

To Local 501
(International Assoc. of Bridge, Struc., & Orn. Iron Workers)
826 Washington St.
Braintree, MA 02184

Efective Immediately I am resigning from the union.

Signed: /s/ Michael G. Barbour
MICHAEL G. BARBOUR

(Auciello Iron Works, Inc., Hudson, MA)

[Respondent's Exhibit 3e]

Date: NOV 21, 1988

To Local 501
(International Assoc. of Bridge, Struc., & Orn. Iron Workers)
826 Washington St.
Braintree, MA 02184

Efective Immediately I am resigning from the union.

Signed: /s/ Robert Cibelli

(Auciello Iron Works, Inc., Hudson, MA)

[Respondent's Exhibit 3f]

Date: NOV 21 / 88

To Local 501 .
(International Assoc. of Bridge, Struc., & Orn. Iron Workers)
826 Washington St.
Braintree, MA 02184

Efective Immediately I am resigning from the union.

Signed: /s/ Quang Nguyen

(Auciello Iron Works, Inc., Hudson, MA)

[Respondent's Exhibit 3g]

Date: 11/21/88

To Local 501
(International Assoc. of Bridge, Struc., & Orn. Iron Workers)
826 Washington St.
Braintree, MA 02184

Efective Immediately I am resigning from the union.

Signed: /s/ Gary F. Boudreau
(Auciello Iron Works, Inc., Hudson, MA)

[Respondent's Exhibit 3h]

Date: 11 - 23 - 88

To Local 501
(International Assoc. of Bridge, Struc., & Orn. Iron Workers)
826 Washington St.
Braintree, MA 02184

Efective Immediately I am resigning from the union.

Signed /s/ [Illegible] Duplisea
(Auciello Iron Works, Inc., Hudson, MA)

[Respondent's Exhibit 4]

Date: 10 – 14 – 88

To Local 501
(International Assoc. of Bridge, Struc., & Orn. Iron Workers)
826 Washington St.
Braintree, MA 02184

Efective Immediately I am resigning from the union.

Signed: /s/ Frank J. Tomolillo
(Auciello Iron Works, Inc., Hudson, MA)

APPENDIX E

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

January 19, 1996

Mr. John D. O'Reilly III
77 Turnpike Road
Post Office Box 3118
Southborough, MA 01745-0118

Re: Auciello Iron Works, Inc.
v. National Labor Relations Board
No. 95-668

Dear Mr. O'Reilly:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is granted. The brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 1, 1996. The brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 29, 1996. A reply brief, if any, is to be filed pursuant to Rule 25.3. Rule 29.2 does not apply.

Sincerely,
/s/ William K. Suter
William K. Suter, Clerk